

House File 2344 - Introduced

HOUSE FILE 2344

BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HF 460)

A BILL FOR

1 An Act relating to drainage or levee districts by providing for
2 mergers, the liability of trustees, bidding requirements,
3 the annexation of land, and authorizing the imposition of
4 assessments upon affected landowners.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MERGER

Section 1. NEW SECTION. **468.262 Purpose.**

The provisions of this part apply to drainage or levee districts participating in a merger.

Sec. 2. NEW SECTION. **468.263 General.**

1. A merger must involve two or more voluntarily participating drainage or levee districts including all of the following:

a. One participating dominant district whose board would survive the merger to govern the merged district.

b. One or more participating servient districts whose boards would be dissolved by the merger.

2. a. The merger must be proposed by the board of each participating drainage or levee district as provided in this part.

b. The proposed merger must be approved by the board of the participating dominant district and one or more boards of the participating servient districts, as provided in this part.

3. a. The boundary of a participating drainage or levee district must adjoin all or part of the boundary of another participating drainage or levee district.

b. Notwithstanding paragraph "a" two participating drainage or levee districts may be separated by land not part of any drainage or levee district if the proposed merger is contingent upon the annexation of such land pursuant to sections 468.119 through 468.121.

4. A merger may occur notwithstanding that a drainage or levee district participating in a merger is not otherwise eligible for dissolution as provided in part 6 of this subchapter.

Sec. 3. NEW SECTION. **468.264 Board participation initiated.**

1. In order to participate in a proposed merger the board of a drainage or levee district must determine that the merger will substantially benefit the owners of land situated in the

1 drainage or levee district.

2 2. A board making the determination described in subsection
3 1 shall enter an order to conduct a public hearing regarding
4 a proposed merger as provided in section 468.265. The board
5 shall enter the order with the auditor of each county where the
6 drainage or levee district is situated.

7 **Sec. 4. NEW SECTION. 468.265 Public hearing.**

8 1. A public hearing must be conducted within forty-five
9 days from the last date that the board enters an order with the
10 auditor of each county where the drainage or levee district is
11 situated as provided in section 468.264. The auditor of each
12 county where the participating drainage or levee district is
13 located shall provide notice of a public hearing regarding the
14 proposed merger. However, the board may designate the auditor
15 of the county with the greatest portion of the district's
16 territory to provide the notice. The notice must include all
17 of the following:

18 *a.* A description of the proposed merger.

19 *b.* The determination made by the board under section
20 468.264.

21 *c.* Whether land in the participating drainage or levee
22 district may be subject to any special assessment as provided
23 in section 468.269.

24 *d.* The date, time, and place of the public hearing.

25 *e.* That all written objections to the proposed merger must
26 be filed in the office of the county auditor.

27 2. The auditor shall deliver the notice provided in
28 subsection 1 to all of the following:

29 *a.* Each owner of land situated within the participating
30 drainage or levee district which is part of the county, as
31 shown by the transfer books of the auditor's office, including
32 railway companies having right-of-way in the district.

33 *b.* Each lienholder or encumbrancer of land situated or
34 the auditor designated by the board within the participating
35 drainage or levee district which is part of the county.

1 *c.* Each actual occupant of land located in the participating
2 drainage or levee district which is part of the county.
3 However, the auditor is not required to name an individual
4 occupant.

5 *d.* Any other person in the county affected by the proposed
6 merger as determined by the board.

7 3. If land is to be annexed as a condition of the merger,
8 as provided in this part, the auditor of the county where the
9 land to be annexed is situated or the auditor designated by the
10 board shall deliver the notice specified in subsection 1 to the
11 owner of such land.

12 4. *a.* Except as otherwise provided in this section the
13 auditor shall provide the notice specified in subsection 1 by
14 ordinary mail to the persons described in subsections 2 and 3.

15 *b.* The auditor shall cause the notice to be published
16 in a newspaper of general circulation in the county where a
17 participating drainage or levee district is situated or the
18 auditor designated by the board. The publication shall be made
19 not less than twenty days prior to the day set for the public
20 hearing. Proof of service shall be made by affidavit of the
21 publisher.

22 *c.* If an agent has been designated, the auditor shall
23 provide the notice to a person's agent in the same manner as
24 provided in section 468.16.

25 5. The boards of one or more participating drainage or levee
26 districts may conduct the public hearing jointly.

27 6. This section shall not be construed to prevent the board
28 of a participating drainage or levee district from convening
29 and conducting a public hearing in a manner consistent with
30 section 468.258.

31 Sec. 5. NEW SECTION. **468.266 Meeting and vote.**

32 1. Each board of a participating drainage or levee district
33 shall meet to vote on a resolution which includes the question
34 whether or not to approve the proposed merger. A board must
35 vote on the resolution within forty-five days of the last

1 public hearing conducted pursuant to section 468.265.

2 2. The board shall only consider written objections to the
3 proposed merger as filed in the office of the county auditor as
4 provided in the notice for a public hearing or comments made at
5 a public hearing conducted pursuant to section 468.265.

6 3. Two or more boards may approve a joint meeting and vote
7 upon a joint resolution. If the board for the participating
8 dominant district votes at the joint meeting, the dominant
9 board shall pay any costs associated with conducting the joint
10 meeting, regardless of the vote's outcome.

11 **Sec. 6. NEW SECTION. 468.267 Joint order.**

12 1. A resolution to merge participating drainage or levee
13 districts approved by their respective boards as provided in
14 section 468.266 shall be effectuated according to the terms and
15 conditions of a joint order for merger entered by those boards.

16 2. Each board shall file the joint order with the auditors
17 of their respective counties. Upon receipt of a joint order,
18 the auditor shall include the joint order as part of the
19 drainage record.

20 3. The auditor shall not file an order unless all territory
21 within the merged drainage or levee district is contiguous, and
22 includes any land required to be annexed as a condition of the
23 merger.

24 4. Upon the filing of the joint order with the county
25 auditor as provided in subsection 2, title to all real estate,
26 other property, improvement, and any right-of-way held by the
27 participating drainage or levee district is vested in the
28 merged drainage or levee district, subject to any condition
29 which applied immediately prior to the merger.

30 5. The auditor of a county designated by the board governing
31 the merged drainage or levee district shall prepare and file
32 with the recorder of each county where the merged district is
33 situated all conveyances and other documentation necessary to
34 effect the transfers referenced in the joint order.

35 6. The merged drainage or levee district assumes all

1 existing obligations of a participating drainage or levee
2 district subject to the joint order.

3 **Sec. 7. NEW SECTION. 468.268 Effect of the merger.**

4 1. *a.* Except as provided in this subsection, a legal or
5 equitable proceeding pending against a participating drainage
6 or levee district prior to a merger shall continue as if the
7 merger did not occur.

8 *b.* The merged drainage or levee district shall be
9 substituted for the participating drainage or levee district
10 standing as a party.

11 *c.* The board governing the merged drainage or levee
12 district may apportion the costs of a legal or equitable
13 proceeding against the landowners of the participating drainage
14 or levee district based upon the classification of land and
15 assessments applicable to the participating drainage or levee
16 district prior to the merger.

17 2. Except as provided in section 468.269, the merger
18 does not affect the classification of land or the levy of an
19 assessment.

20 3. The original cost and the subsequent cost of improvements
21 in a participating drainage or levee district under this part
22 shall be added to and become a part of the original cost and the
23 subsequent cost of improvements in the merged drainage or levee
24 district.

25 4. The surviving board of a merged drainage or levee
26 district shall pay any remaining costs associated with the
27 merger.

28 **Sec. 8. NEW SECTION. 468.269 Special assessment — merged**
29 **land.**

30 1. In addition to assessments imposed pursuant to sections
31 468.49 and 468.50, the surviving board of a merged drainage or
32 levee district may impose a special assessment on land situated
33 in the merged district which was a participating servient
34 district prior to the merger.

35 2. The special assessment shall apply to costs of

1 improvements made within the participating dominant district
2 prior to the merger for not longer than five years prior to the
3 date that the joint order was filed with the county auditor by
4 the surviving board for the participating dominant district
5 pursuant to section 468.267.

6 3. In order to impose a special assessment under this
7 section all of the following must apply:

8 a. The board must approve a report by an engineer
9 appointed by the board as provided in this part stating
10 those improvements directly benefiting land situated in the
11 participating dominant district were made within the five-year
12 period provided in subsection 2.

13 b. The notice for a public hearing required in section
14 468.265 must have stated that the board may impose a special
15 assessment under this section.

16 4. The board shall not impose the special assessment under
17 this section on land that was annexed as part of the merger.
18 However, such land is subject to a special assessment pursuant
19 to sections 468.119 through 468.121.

20 Sec. 9. DIRECTIONS TO CODE EDITOR. The Code editor shall
21 codify the provisions of this division of this Act as chapter
22 468, subchapter I, part 7.

23 DIVISION II

24 LIABILITY OF TRUSTEES

25 Sec. 10. NEW SECTION. 468.526A Liability.

26 A trustee is not personally liable for a claim which is
27 exempted under section 670.4, except a claim for punitive
28 damages. A trustee is not liable for punitive damages as
29 a result of acts in the performance of a duty under this
30 chapter, unless actual malice or willful, wanton, and reckless
31 misconduct is proven.

32 DIVISION III

33 BIDDING PROCEDURES

34 Sec. 11. Section 468.3, Code 2014, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 9. The term "*minor repair*" shall mean
2 any repair not in excess of the competitive bid threshold as
3 provided in section 26.3.

4 Sec. 12. Section 468.34, Code 2014, is amended by striking
5 the section and inserting in lieu thereof the following:

6 **468.34 Bidding procedures — Iowa Construction Bidding**
7 **Procedures Act.**

8 When ordering the construction of an improvement under
9 this part, the board and any bidders shall comply with the
10 competitive bid requirements applicable to a governmental
11 entity ordering the construction of a public improvement in
12 chapter 26.

13 Sec. 13. Section 468.66, Code 2014, is amended to read as
14 follows:

15 **468.66 Bids required.**

16 In case the board ~~shall finally determine~~ determines that
17 ~~any such changes as defined a change described~~ in section
18 468.62 ~~shall be made involving an expenditure of twenty~~
19 ~~thousand dollars or more~~ increases the cost of the improvement
20 to more than the competitive bid threshold as provided in
21 section 26.3, the work shall be let by bids in the same
22 ~~manner as is provided for the original construction of such~~
23 ~~improvements~~ board and any bidders shall comply with the
24 competitive bid requirements applicable to a governing entity
25 ordering the construction of a public improvement in chapter
26 26.

27 Sec. 14. Section 468.126, subsection 1, paragraph c, Code
28 2014, is amended by striking the paragraph and inserting in
29 lieu thereof the following:

30 c. When ordering a repair under this section, the board and
31 any bidders shall comply with the competitive bid requirements
32 applicable to a governing entity ordering the construction of
33 a public improvement in chapter 26. If the repair is more
34 than fifty thousand dollars but less than the competitive bid
35 threshold in section 26.3, the board shall conduct a hearing

1 on the matter of making the proposed repair. The board shall
2 provide notice of the hearing as provided in sections 468.14
3 through 468.18.

4 Sec. 15. Section 468.126, subsection 2, Code 2013, is
5 amended to read as follows:

6 2. In the case of a minor repairs repair, or in the
7 eradication of brush and weeds along the open ditches, not
8 in excess of twenty thousand dollars, where the board finds
9 that a saving to the district will result, the board may cause
10 the repairs or eradication to be done by secondary road fund
11 equipment, or weed fund equipment, and labor of the county and
12 then reimburse the secondary road fund or the weed fund from
13 the fund of the drainage district thus benefited.

14 Sec. 16. Section 468.126, subsection 4, Code 2014, is
15 amended to read as follows:

16 4. For the purpose of this subsection, an "*improvement*" in
17 a drainage or levee district in which any ditch, tile drain or
18 other facility has previously been constructed is a project
19 intended to expand, enlarge, or otherwise increase the capacity
20 of any existing ditch, drain, or other facility above that for
21 which it was designed.

22 a. When the board determines that ~~improvements are an~~
23 improvement is necessary or desirable, the board shall appoint
24 an engineer to make surveys as seem appropriate to determine
25 the nature and extent of the needed ~~improvements~~ improvement,
26 and to file a report showing what ~~improvements are~~ improvement
27 is recommended and ~~their~~ its estimated costs cost, which report
28 may be amended before final action. ~~If the estimated cost of~~
29 ~~the improvements does not exceed twenty thousand dollars, or~~
30 ~~twenty-five percent of the original cost of the district and~~
31 ~~subsequent improvements, whichever is the greater amount, the~~
32 ~~board may order the work done without notice.~~ The board shall
33 not divide proposed improvements into separate programs in
34 order to avoid ~~the limitation for making improvements without~~
35 notice compliance with paragraph "b". ~~If the board deems~~

~~1 it desirable to make improvements where the estimated cost~~
~~2 exceeds the twenty thousand dollar or twenty-five percent~~
~~3 limit, the board shall set a date for a hearing on the matter~~
~~4 of constructing the proposed improvements and also on the~~
~~5 matter of whether there shall be a reclassification of benefits~~
~~6 for the cost of the proposed improvements and shall give~~
~~7 notice as provided in sections 468.14 through 468.18. At the~~
~~8 hearing, the board shall hear objections to the feasibility~~
~~9 of the proposed improvements and arguments for or against~~
~~10 a reclassification presented by or for any taxpayer of the~~
~~11 district. Following the a hearing, if required by section~~
~~12 26.12, the board shall order that the improvements it deems~~
~~13 desirable and feasible be made and shall also determine whether~~
~~14 there should be a reclassification of benefits for the cost of~~
~~15 improvements. If it is determined that a reclassification of~~
~~16 benefits should be made, the board shall proceed as provided in~~
~~17 section 468.38. In lieu of publishing the notice of a hearing~~
~~18 as provided by this subsection section 331.305, the board may~~
~~19 mail a copy of the notice to each address where a landowner in~~
~~20 the district resides by first class mail if the cost of mailing~~
~~21 is less than publication of the notice. The mailing shall be~~
~~22 made during the time the notice would otherwise be required to~~
~~23 be published.~~

~~24 b. When ordering the construction of an improvement under~~
~~25 this subsection, the board shall comply with the competitive~~
~~26 bid requirements applicable to a governing entity ordering~~
~~27 the construction of a public improvement in chapter 26. If~~
~~28 the improvement is more than fifty thousand dollars but less~~
~~29 than the competitive bid threshold in section 26.3, the board~~
~~30 shall conduct a hearing on the matter of making the proposed~~
~~31 improvement. The board shall provide notice of the hearing as~~
~~32 provided in sections 468.14 through 468.18.~~

~~33 c. If the estimated cost of the improvements as defined~~
~~34 in this subsection exceeds twenty-five thousand dollars the~~
~~35 competitive bid threshold as provided in section 26.3, or the~~

1 original cost of the district plus the cost of subsequent
2 improvements in the district, whichever is the greater amount,
3 a majority of the landowners, owning in the aggregate more than
4 seventy percent of the total land in the district, may file a
5 written remonstrance against the proposed improvements, at or
6 before the time fixed for hearing on the proposed improvements,
7 with the county auditor, or auditors in case the district
8 extends into more than one county. If a remonstrance is filed,
9 the board shall discontinue and dismiss all further proceedings
10 on the proposed improvements and charge the costs incurred
11 to date for the proposed improvements to the district. Any
12 interested party may appeal from such orders in the manner
13 provided in this subchapter, parts 1 through 5. However, this
14 section does not affect the procedures of section 468.132
15 covering the common outlet.

16 Sec. 17. REPEAL. Sections 468.35 and 468.36, Code 2014,
17 are repealed.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 BACKGROUND — GOVERNANCE. A drainage or levee district
22 (district) is managed by a board of supervisors in the county
23 where the district is located (Code chapter 468, subchapter
24 I), by a joint board of supervisors if the district extends
25 into more than one county (Code chapter 468, subchapter II)
26 but may also be managed by a board of trustees elected by the
27 district's landowners (Code chapter 468, subchapter III).

28 BILL'S PROVISIONS — MERGER. This bill allows for the
29 voluntary merger of two or more participating districts which
30 must include a dominant district whose board survives the
31 merger and a servient district whose board would be dissolved
32 if the merger were approved. The boundary of a participating
33 district must adjoin a neighboring district or be separated
34 by land which is to be annexed as part of the merger. Each
35 board must make a determination that a proposed merger will

1 substantially benefit the owners of land situated in the
2 district, conduct a public hearing regarding the proposed
3 merger, and vote to approve or disapprove of the merger. The
4 merger does not affect a legal or equitable proceeding pending
5 against a participating district except that the name of the
6 party is changed to the merged district. A special assessment
7 may be imposed on land located within the servient district and
8 land that was annexed as part of the merger.

9 BILL'S PROVISIONS — LIABILITY OF TRUSTEES. The bill
10 provides that a member of a board of trustees is not personally
11 liable for an act or omission in the same manner that an
12 employee of a municipality (city, county, township, school
13 district, or any other unit of local government other than a
14 soil and water conservation district) is not personally liable
15 for certain acts or omissions under the municipalities tort
16 claim chapter (Code chapter 670). However, this exemption
17 extended to a trustee does not apply to a claim for punitive
18 damages in which the trustee acted with actual malice or
19 willful, wanton, and reckless misconduct.

20 BILL'S PROVISIONS — BIDDING PROCEDURES. The bill requires
21 that in order to let work for an improvement or repair
22 the board must comply with the "Iowa Construction Bidding
23 Procedures Act" (Code chapter 26) which currently applies
24 to a "governmental entity" defined in part to mean the
25 state, political subdivisions of the state, and all boards
26 or commissions empowered to enter into contracts for the
27 construction of public improvements. Code chapter 26 requires
28 a governmental entity to advertise for sealed bids for the
29 proposed public improvement by publishing a notice to bidders
30 if the estimated total cost exceeds a threshold amount of
31 \$100,000. The bill provides that the board must hold a public
32 hearing when the cost of the improvement or repair is more than
33 \$50,000 but less than the threshold amount in Code chapter
34 26. The bill eliminates a number of provisions that currently
35 require the board to publish a notice in a newspaper, hold a

H.F. 2344

1 hearing, open bid responses, post bonds, and award contracts
2 (Code sections 468.34 through 468.36). These provisions apply
3 if the amount of the work exceeds \$20,000.